

EXHIBIT 5

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

FAIR ISAAC CORPORATION, a Delaware corporation,)	Case No: 16-cv-1054 (WMW/DTS)
)	
)	
Plaintiff,)	
)	
v.)	Jury Trial Demanded
)	
FEDERAL INSURANCE COMPANY, An)	
Indiana corporation, and ACE AMERICAN)	
INSURANCE COMPANY, a Pennsylvania)	
corporation)	
)	
Defendants.)	

EXPERT REPORT OF WILLIAM S. MCCARTER

May 17th, 2019

CONFIDENTIAL – ATTORNEY’S EYES ONLY

insurance processing applications that are part of a complex set of systems that make up Federal's business systems.⁶

25. Mr. Whitener does not undertake to measure any efficiencies Blaze provided to Federal.

26. It is my opinion that FICO provided Federal with an industry agnostic business rules engine (Blaze), which is a tool to manage rules Federal developed using its insurance expertise and knowledge.⁷ Blaze was not useable out-of-the-box.⁸ FICO did not provide Federal any insurance business rules.⁹ The insurance business logic, derived from Federal's own employees using their own industry expertise, was converted into business rules and loaded into Blaze.¹⁰ Blaze is analogous to an Excel spreadsheet that must be loaded with data and rules in order to generate output. It is a tool that is useless on its own without a user, like Federal, to load its business data and business rules into the software.

27. Further, it is my opinion that when purchasing insurance products customers are not influenced by and do not care what rules management system the insurance company uses. Blaze software is invisible to agents and brokers that may potentially use an application that also uses Blaze as a technology.

28. Federal had, and continues to have, many alternatives to Blaze that could have been deployed to provide the same utility to its business operations as Blaze.

29. Federal's gross written premium revenue and profits are the result of Federal's insurance knowledge, expertise, and access to insurance markets; its insurance products, business logic, and data; and its complex harmonization of individual technologies and production skills used to conduct insurance business.¹¹

30. Federal's revenue and profits are not attributable to its use of a single piece of software like Blaze in a complex system that ultimately drives Federal's financial results.

31. I explain the bases for these opinions below.

⁶ FED006248_0001. pg.3

⁷ FICO. (2019). FICO Decisions Technologies. Retrieved from <https://www.fico.com/en/latest-thinking/product-sheet/fico-decision-technologies>

⁸ Deposition of Chris Ivy. dated March 14, 2019. (*Ivy Deposition*). pg. 11:13-16

⁹ *Ivy Deposition*. pg. 23:23-25, 49:25, 50:1

¹⁰ *Ivy Deposition*. pg. 10:25, 11:1-6

¹¹ Hamel, G. Prahalad, C.K. (May-June 1990). The Core Competence of the Corporation. Harvard Business Review. Boston, MA. Pg. 7. (competence in products with access to markets...contribution to the end customer product...Harmonization of complex individual technologies and production skills".

cents of underwriting profit or a combined ratio of 80%. If Federal pays \$1.05 in expenses for every \$1.00 of earned premium, the company has an underwriting loss or combined ratio of 105%.

41. The overall combined ratio is the aggregate of the losses and expenses from all lines of business divided by earned premium from all lines of business. Federal improves its combined ratio by adjusting premium rates and reducing expenses.

42. The overall profits of Federal are the underwriting profit from insurance policies plus investment income. Blaze was not involved in Federal's investment management systems. FICO concedes that it is only seeking profit derived from Federal's gross written premiums. This report, therefore, focuses solely on Federal's profit from gross written premium revenue for insurance policies.

43. To improve gross written premium revenue and profits, Federal outlines multiple strategies focused on growth in its annual report.¹⁷ FICO (and the software Blaze) has no involvement in the development and implementation of Federal's growth strategies.

B. Federal Organization

44. Federal employs over 35,000 people to support its daily business operations. Federal has skilled experts with specialized insurance knowledge and expertise. Federal's employees include skilled actuaries, product managers, underwriters, compliance managers, and many more specialized skillsets. These insurance experts know the insurance business and make independent decisions based on their own expertise to develop products, pricing, and assess risk among the many other activities an insurance company performs.

45. Actuaries analyze financial risk using mathematics, statistics and financial theories. Actuaries work in the insurance industry to determine good risks or where the companies are less likely to experience a loss. Thus, pricing rules and decisions are made by Federal's actuaries, using their own industry expertise, and play a large role in determining gross written premium for insurance policies.

46. Product managers develop the insurance products that the insurance company will sell. The insurance products are made up of many rules and decision, which dictate whether the company will accept an insurance policy and these rules and decisions guide the selling and servicing of the insurance policy.

¹⁷ Chubb Limited. (2018). Annual Report. Pg. 8-14. Retrieved from http://s1.q4cdn.com/677769242/files/doc_financials/2019/AGM/Chubb-Limited-2018-Annual-Report.pdf

47. Underwriters decide whether to provide insurance, and under what terms. Underwriters assess insurance applications submitted by Federal agents and customers. Underwriters either accept or reject the applications based on Federal's underwriting rules and decisions. It is the underwriters' decision, using their own insurance expertise, that determine the gross written premium from approved insurance policies.

48. Underwriters also provide feedback to the product managers and actuaries on changes to the product and pricing. This collaboration adds another layer of complexity to Federal's business operation and helps ensure that Federal is taking appropriate financial risks for the insurance policies that are written.

49. Compliance managers make sure that a company is conducting its business in full compliance with all national and international laws and regulations that pertain to its particular industry, as well as professional standards, accepted business practices, and internal standards. If a compliance manager develops a business rule that is not in compliance with regulations, Federal could be subject to an audit and potentially fined. Federal's compliance managers, not FICO, developed and maintained business rules and decisions related to regulatory compliance.

50. Claims managers and specialist are key resources for a insurance company. Typically, agents and brokers communicate with policyholder as an intermediary for the insurance carrier. Claims is only one of two places where the policyholder actually connects with an insurance carrier. The other is policy billing services. The claims experience is key to retention of policyholder over time. Federal has an experience team of claims experts that define the business rules for processing and decisioning a claim from a policyholder.

51. It has been my experience in many of the insurance companies where I have worked that the employees are critical to the business. While automation helps improve the employee workload, it is the employees knowledge of the business and customer relationship management skills that provide access to markets and insures the company takes the right risk and pays appropriate claims. It takes human judgment to underwrite and manage claims in insurance. Technology alone does not generate these results.

52. Federal's organization is complex and large and made up of insurance experts that make all the business rules and decisions relative to its business operations.¹⁸ FICO does not provide

¹⁸ FED000122_0013. "All companies have business rules...In the minds of experienced employees".

for Federal's Business Rules and decisions processed by Blaze. An incorrect business rule loaded into Blaze will lead to a incorrect decision out of Blaze.

134. Even if Federal loads accurate business rules into Blaze, the benefits are efficiencies in labor. Blaze is not attributable to the gross written premium or profits. Federal makes all the decisions that lead to revenue and profit.

C. Chubb & Son, a Division of Federal Insurance Co., Licensed Blaze Advisor to Aid in its Expansion of Under Penetrated Specialty Markets

135. Mr. Whitener suggests that Blaze allowed Chubb to access under penetrated specialty markets. Federal developed its proprietary business plan and technology plan to support access to under penetrated specialty markets on its own. FICO was not involved in the development of Chubb's business plan. Blaze was identified as part of the technology plan that was being considered for Federal's new business opportunity. Federal provided all the people, processes, and technology to support the business plan. Blaze was already in use by Federal to manage the rules associated with the insurance policy processing for specialty markets. A decision to use or not to use Blaze would not have affected Federal's plans for under penetrated specialty markets.

136. As I have previously stated, it is Federal's knowledge and expertise in insurance, Federal's customized insurance business processes, and Federal's proprietary insurance business applications that enable its business planning and revenue growth. In my opinion, singling out Blaze or any software as the reason for Federal's expansion in under penetrated specialty markets is mispresenting Blaze's role in Federal's insurance processing systems.

D. Chubb's Use of Blaze Advisor Contributes to Gross Written Premium

137. In this section of Mr. Whitener's expert witness report he provides a description of each Federal proprietary insurance applications that utilizes Blaze and claims that Blaze contributed to gross written premium⁶⁹. Mr. Whitener uses examples of Blaze handling new business policies, renewal policies, rate changes, and claim scoring as examples. Whitener overstates the role of Blaze in these applications and also overstates the role of these applications in Federal's larger business.

138. The insurance processing applications Mr. Whitener describes are all Federal's proprietary insurance processing applications that Federal designed, developed, and implemented to perform

⁶⁹ *Whitener Report*. pg. 14-35

149. Federal is not using the full decision management suite and therefore not realizing all of the efficiency benefits Mr. Whitener outlines. Federal is using Blaze Advisor which is a technology of FICO's Decision Management Suite.⁷⁶ According to FICO's website, the Decision Management Suite is a separate offering from Blaze Advisor Decision Rules Management System.

150. Mr. Whitener includes a quote from Mark E. Watson, III, CEO of Argo Group that that insurance companies must have "judicious use of cutting edge technology combined with insurance expertise".⁷⁷ This quote reinforces my opinion that it takes more than technology to generate results for a business. Mr. Watson highlights the combined role of technology with insurance expertise which is only found in the human resources in Federal.⁷⁸

151. It is my opinion that technology on its own does not contribute to improved revenue and revenue growth. It requires the insurance business knowledge from the business users and technology that has insurance processing functionality. To generate revenue and grow revenue requires a set of core competencies in the insurance industry.⁷⁹

152. Mr. Whitener attempts to show the dependency on decision management in underwriting and cites an article by an employee of Guidewire, a competitor to Blaze.⁸⁰ Ms. Nicole Mongillo, the author of the article, went on to say that "what's needed for accurate, efficient underwriting is more complex than either a human or machine, it's a combination of both".⁸¹ Mongillo recognizes that technology alone will not support the core function of insurance underwriting. She argues that it takes the business knowledge that insurance experts provide to actually generate business results. Mr. Whitener omitted the need for Federal insurance expertise as part of his conclusion.

153. Mr. Whitener provides information about the future of underwriting and use of artificial intelligence. Federal is only using the business rules engine of Blaze and is not using any artificial intelligence capability of FICO's Decision Management Suite. Artificial intelligence technology does not apply in this matter.

⁷⁶ FICO. (2019). Product. (*Decision Management*). <https://www.fico.com/en/products?category=646>

⁷⁷ *Whitener Report*. pg. 53:154

⁷⁸ *Whitener Report*. pg. 53:154

⁷⁹ Hamel, G. Prahalad, C.K. (May-June 1990). The Core Competence of the Corporation. Harvard Business Review. Boston, MA. Pg. 7. (competence in products with access to markets...contribution to the end customer product...Harmonization of complex individual technologies and production skills".

⁸⁰ *Whitener Report*. pg. 55-56:158

⁸¹ *Whitener Report*. pg. 56. "...its becoming quite clear that what's needed for accurate, efficient underwriting is more complex than either human or machine. It's a combination of both".

154. It is my opinion that Federal's gross written premium revenue and profits are the result of Federal's knowledge and expertise in the insurance industry, Federal's customized insurance business processes, and Federal's proprietary insurance business applications which it developed and owns. Blaze is a technology that was used improve the management of Federal's business rules and decision making processes within certain applications.

Dated: May 17, 2019



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APPENDIX B – THE CORE COMPETENCE OF THE CORPORATION

155. It is my opinion that technology supports business operations by improving the efficiency of human tasks and activities. Technology does not replace the core competencies that are required to operate a business and deliver financial results.

156. The core competencies required to operate a business are outlined in the Harvard Research Article on “The Core Competence of the Corporation”.⁸³ Federal has all the core competencies to operate its insurance business. FICO’s core competency is in the technology marketplace providing software to support its customers. FICO does not have a core competency in insurance.

157. There are three tests to determine a company’s core competencies:

- “First, a core competence provides potential access to a wide variety of markets”.⁸⁴ Competence in the insurance industry enables Federal to sell and service insurance products and participate in the insurance markets globally. FICO does not have this competence. FICO sells technology products that are industry agnostic.
- “Second, a core competence should make a significant contribution to the perceived customer benefits of the end product”.⁸⁵ Federal provides financial protection from loss to the end customers (policy holders). FICO does not provide any significant customer benefits to Federal policy holders. FICO takes no risk on insurance policies processed using Blaze.
- “Finally, a core competence should be difficult for competitors to imitate”.⁸⁶ Federal has unique insurance policies and expertise in its employees that provide its production skills. FICO provides no insurance knowledge or business rule content.

158. Based on my experience in developing, implementing, purchasing, and supporting technology over the last 34 years, technology has provided a supporting role in business. I also know, that one technology is not responsible for delivering the financial results of an insurance company.

⁸³ Hamel, G. Prahalad, C.K. (May-June 1990). The Core Competence of the Corporation. pg. 7. Harvard Business Review. Boston, MA.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*